

# Reimagining Youth Justice: How the Dual Crises of COVID-19 and Racial Injustice Inform Judicial Policymaking and Reform

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## ABSTRACT

The COVID-19 pandemic and the rejuvenated movement for racial justice in 2020 have presented an opportunity to reimagine the roles, practices, and policies of juvenile and family court systems actors. In order to capture contemporary ideas about judicial practice and policy reforms, semi-structured interviews were conducted with Hon. Edwina Mendelson, Deputy Chief Administrative Judge for the Office of Justice Initiatives in New York State, and Hon. Steven Teske, Chief Judge of the Juvenile Court of Clayton County, Georgia. These interviews yielded several recommendations for judicial reform in youth justice (e.g., implement court-wide procedural justice practices, improve accessibility using technology). These recommendations can be used by systems actors across the country, particularly those interested in adapting their courtroom practices for a post-pandemic world.

**Key words:** COVID-19, judicial reform, youth justice, semi-structured interviews.

## INTRODUCTION

The novel coronavirus pandemic has significantly impacted the American justice system. Practices governing admissions into, release from, and visitation in youth detention centers and adult prisons alike have been transformed in a short period of time

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(Rovner, 2020). Law enforcement strategies have been redesigned, with many jurisdictions relying increasingly on citations rather than arrests (Brennan Center, 2020). The courts are no exception: many state and local jurisdictions have either restricted or canceled jury trials or have begun requiring tele-hearings or teleconferences in lieu of in-person appearances. The pandemic has presented justice actors and administrators with unprecedented logistical challenges and an opportunity for transformative reevaluation and reform. The word “reimagining” rarely arises in the judicial context (Mendelson, 2020), but recently it has become far more prevalent, fueled by both the pandemic and the renewed vigor of racial justice claims prompted by the deaths of George Floyd, Breonna Taylor, and many other Black Americans, including youth like Cornelius Fredericks.

As the judiciary is a critical component of the U.S. justice system, we have interviewed two pioneers in judicial innovation to reflect on this opportunity: Judge Steven Teske, Chief Judge of the Juvenile Court of Clayton County, GA, and Judge Edwina Mendelson, Deputy Chief Administrative Judge for Justice Initiatives of New York State. Despite operating in different political contexts (conservative-leaning Georgia versus liberal-leaning New York) and roles within the judiciary, both Judge Teske and Judge Mendelson have made notable contributions to reform. Their insights, developed from long careers in and around juvenile and family courts, illustrate the impact of COVID19 and the racial justice movement from diverse perspectives. The conversations presented in this paper capture a moment of crisis that has inspired visionary jurisprudence, with the aim of providing compassionate and racially equitable recommendations for reform for juvenile and family court judges.

## Background - The Historical Moment

### *Racial Justice Context*

Research has long shown that the U.S. criminal justice system perpetuates racial and ethnic disparities at all system points, including within juvenile justice. These disparities compound as individuals progress further into the system (Alexander, 2010; Hetey & Eberhardt, 2018). The tension of inequity and the criminal justice system has erupted at numerous times in history as impetus for change, with varying outcomes (Alexander, 2010). In the past decade, specific incidents have highlighted this pervasive and persistent racial injustice; most recently, the killings of George Floyd, Breonna Taylor, and Cornelius Fredricks, among others, have ignited sustained pressure for change (Eligon, 2020). This current movement in confluence with the COVID-19 pandemic creates a unique opportunity for systemic change, therefore offering the opportunity to reshape justice institutions with a central focus on racial equity.

### *COVID-19 Context*

The COVID-19 pandemic has cost the United States, and communities of color in particular, irreversible loss. In comparison with white Americans, Native peoples have suffered a 5.3 times higher hospitalization rate and a 1.4 times higher death rate, Black Americans have suffered a 4.7 times higher hospitalization rate and a 2.1 times higher

death rate, and Hispanic and Latino Americans have suffered a 4.6 times higher hospitalization rate and a 1.1 times higher death rate (CDC, 2020b). These numbers represent only a fraction of COVID-19's quantifiable disparate impact. Devastating job loss, emotional trauma, educational disruption, and more - all in the context of ongoing systemic racism and police brutality - have defined the experiences of many people of color in America (Irons, Gagnon, Alpern, Rainey & Lopes, 2020). While much of the discussion about COVID-19's impact has understandably focused on older populations, emerging evidence has shown that the pandemic has significantly impacted youth, both from a public health and a justice perspective (Bixler et al., 2020; CDC, 2020a; Duarte & Chandonnet, 2020). System-involved youth occupy a space of heightened precarity. At the start of the pandemic, juvenile detention facilities either drastically reduced or eliminated family visitations, isolating confined youth from their loved ones (Rovner, 2020). Meanwhile, the physical impossibilities of following health guidance placed confined youth at a higher risk for contracting the virus (Buchanan, Castro, Kushner & Krohn, 2020). A survey by the Annie E. Casey Foundation (AECF) found that in August 2020, the rate of COVID-19 in youth detention facilities was 3.5 times higher than the rate of COVID-19 for the U.S. population overall (AECF, 2020c). Adding to concerns for the safety of youth in detention facilities, recent research suggests that youth aged 10 to 19 may transmit COVID-19 at heightened rates (Park et al., 2020).

Though the coronavirus pandemic represents a moment of ineffable loss, the disruptions it has caused presents an opportunity to re-envision our justice systems. Courts have revised their youth detention practices due to public health concerns, resulting in a dramatic drop in confinement. Systems turned to community-based resources to support increased diversion and early releases from confinement, and some jurisdictions even adopted policies of only using arrest as a last resort (Buchanan et al., 2020). From March 1 to April 1, the youth detention admission rate decreased by 52% (AECF, 2020a). The overall reduction in the youth detention population since March was 27% as of July 8 (AECF, 2020b). However, there is emerging evidence that systems have not sustained these initial gains. Overall, the number of youth in detention leveled off from this rapid decline between May and August, and disparities among youth of color grew (AECF, 2020c). Despite a small narrowing of the gap between Black and white youth detention admissions, as of July 8<sup>th</sup>, Black youth had been released slower than white youth, resulting in widening overall disparities in the confined population (AECF, 2020b).

Beyond these changes in youth detention, juvenile and family court operations have looked markedly different as a result of the pandemic. Nationally, many courts closed for all but emergency appearances, temporarily suspending dockets and holding only necessary hearings virtually (Buchanan et al., 2020). Over half of states issued statewide orders for the general suspension of in-person proceedings, with the rest leaving localities in charge of the decision. Almost every state issued statewide orders regarding jury trial restrictions (Hecht, 2020). Plans for when and how to return to in-person court operations vary by state and jurisdiction, and it is unclear if or when juvenile and family

courts will return to pre-pandemic levels of normal daily operations and to what extent remote proceedings will become the norm.

## Looking Forward

Post-pandemic, the juvenile and family court systems will have to contend with operational setbacks like case backlogs as well as deeper issues in terms of pandemic-related trauma and chronic racial and ethnic disparities. This process calls for meaningful collaboration between community groups, impacted youth and families, service providers, justice system actors, and others. This paper focuses specifically on the role of juvenile and family court judges in seizing this unique opportunity to shape a more equitable justice system in a post-pandemic world, with particular focus on eliminating racial and ethnic disparities.

In an attempt to contribute to the intellectual impetus of this moment, we explore the positions and achievements of judicial practitioners Judge Edwina Mendelson and Judge Steven Teske. First, we outline their regional contexts and past contributions to the judiciary. Next, we provide a brief overview of how their jurisdictions have changed and adapted as a result of the pandemic, charting this change from two points in time, June 2020 and September 2020. In June 2020, both judges participated on a panel-based series specifically about COVID-19 and youth (Irons et al., 2020).<sup>1</sup> This early look at the pandemic's impacts captures an important snapshot in time. Our September interviews allow for reflection and build upon strategies that emerged months before. Finally, we draw on the recent scholarly and professional contributions of both judges and our conversations with them to provide recommendations to other judges and court-based justice system actors. We frame these recommendations through the lens of current events to explain how judges can make the most of the pandemic era's lessons.

## METHODS

In September 2020, we spent approximately four hours in individual semi-structured interviews with New York State Judge Edwina Mendelson and Clayton County, Georgia Judge Steven Teske. Together, these judges have over 50 years of legal experience. In order to gather their insights about judicial reform in the context of the COVID-19 pandemic and more broadly, we asked questions about what efforts they make to realize justice in their work; their perspectives on the intersections between the COVID-19 pandemic, racial justice movement, and the juvenile justice system; their strategies for engaging in reform; and advice for other judges.

Judge Mendelson and Judge Teske each have unique roles and responsibilities in the judiciary. Judge Mendelson works in New York City and throughout New

<sup>1</sup> Other panelists included researchers, policymakers, and other nonjudicial practitioners. Judge Mendelson and Judge Teske were the only judges involved in the Forum. Other judges were not approached to participate in this study, though future research should seek to collect other perspectives.

York State. Judge Teske works in Clayton County, Georgia and collaborates with other jurisdictions, sometimes across state borders, to help implement restorative practices. By drawing from two successful judicial reformers who operate in politically divergent states, the authors hope to highlight reform strategies that other judges working within similarly diverse jurisdictions can apply. Their contrasting positions within the judicial system provide for a well-rounded analysis of the various approaches that new and experienced judges can use to advocate for reform. Below, we briefly elaborate on the judges' current roles. Note that we adopt a statewide view for New York's reforms and a more local view of Clayton County for Georgia's reforms due to Judge Mendelson's and Judge Teske's respective roles and primary spheres of influence.

### **Judge Edwina Mendelson**

Judge Mendelson, who describes her approach to justice as grounded in dignity, fairness, and respect, began her career in New York as a public interest lawyer before becoming a family court judge in New York City. She has been a judge since 2003 and has served in a variety of capacities ranging from trial court to administrative judicial policy leader. She is currently the Deputy Chief Administrative Judge for the Office of Justice Initiatives in New York State and was recently appointed to oversee the NYS Equal Justice Initiative. Judge Mendelson is responsible for ensuring equal access to the court systems, with a particular focus on youth and families. She is also a Court of Claims judge, appointed in 2017 by Governor Andrew Cuomo (New York State Unified Court System, a). Some of her duties include working with local judges to share perspectives on how the law is interpreted and enacted. She is a member of a variety of professional associations, including the National Council of Juvenile and Family Court Judges and the National Association of Women Judges, among others. Recently, she became a member of the NYS Juvenile Justice Advisory Group (JJAG). Judge Mendelson has had an active role in several judicial changes throughout her career as she was involved in both the Close to Home Initiative in New York City and the state-wide Raise the Age efforts.

#### *Close to Home Initiative*

In 2012, New York State authorized, and New York City implemented this placement reform initiative to maintain New York City youth within their local jurisdictions as opposed to state run facilities. Implementation required careful planning and collaboration between the governor's office, the mayor's office, and the Office of Children and Family Services state agency (Ferone et al., 2014). Judge Mendelson was the Administrative Judge in charge of all New York City courts during her involvement with this Initiative.

#### *Raise the Age*

In 2017, New York State passed legislation to begin the two-year phased process of raising the age of criminal responsibility from 16 to 18 years of age (NY Senate, 2017). Throughout this process, Judge Mendelson has held leadership roles and served on planning committees. As localities continue to successfully implement these changes, she has

spent time addressing issues as they arise to see how this law impacts lives “on the ground.”

### Judge Steven Teske

Judge Teske began his legal career in corporate litigation before taking a position as Special Assistant Attorney General, where he became familiar with the juvenile and family court systems. Since 1999, Judge Teske currently has served as the appointed Chief Judge of the Juvenile Court of Clayton County, Georgia and as a Superior Court Judge by designation (Georgia Department of Juvenile Justice, 2020). In his courtroom, operating under a restorative, non-punitive model, Judge Teske upholds relationship-building and respect for youth and families as key components of ensuring access to justice. Under his leadership (prior to the start of the pandemic), Clayton County’s juvenile detention rates decreased by 77%, commitments for Black youth decreased by 68%, status offense filings decreased by 90%, and probation caseloads decreased by 83%, among other declines (Teske, 2020b). The reforms that Judge Teske instated in his jurisdiction to address issues served as models for later statewide and national juvenile justice reforms (Teske, 2020b). His successful efforts to dismantle the school-to-prison pipeline and reduce youth detention rates with a focus on reducing racial disparities has inspired other jurisdictions to rethink their approaches to youth justice using the “Teske Model” (Nevers et al., 2015).

#### *School-based Reform*

From the mid-1990s to the early 2000s, the Juvenile Court of Clayton County experienced a sharp increase in school-based referrals, the vast majority connected to zero-tolerance policies (Teske, 2011, 2020b). To address school-based arrests, Judge Teske established a school-justice partnership called the School Referral Reduction Program in 2004, inspired by the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (Slay, 2019). The partnership granted school resource officers access to all court-based restorative justice programs without needing to file a complaint. By 2016, Clayton County’s graduation rates increased by 30%, school-based referrals and arrests dropped by 91%, and the overall juvenile crime rate decreased by 71% (Teske, 2016).

#### *Statewide Juvenile Justice Reform*

In 2011, Judge Teske was appointed to serve on the state’s Council for juvenile justice system reform. The Council’s recommendations went into effect in 2014 with the enactment of HB 242 after a unanimous vote in favor of the bill (Willard et al., 2013). Some of HB 242’s reforms include the increased use of community and evidence-based programming, improved data collection and reporting, and the reinvestment of reform-precipitated cost savings into community-based programs (Willard et al., 2013). As a result, youth commitment to state custody rates dropped by 57% by the end of 2018 and three detention facilities were shut down (Criminal Justice Coordinating Council, 2018).

## Pandemic-Precipitated Operational Changes and Reforms: Brief Overview

### *New York State*

New York Courts never fully shut down, even as New York became the global epicenter of the pandemic. However, Governor Cuomo's PAUSE Initiative greatly reduced their operations (United States Department of State, March 2020). As of this writing in November 2020, the courts are not operating at full capacity yet, although efforts are being made to increase capacity to address the resulting backlog (New York Office of Court Administration, 2020).

This digital shift has had unexpected effects on the organization of court proceedings. Judges, including Judge Mendelson, were mandated to work from home, and only the most essential court functions happened in person. As the pandemic continues, court operations continue to rely on technology for some day-to-day operations.

The current moment as in other times of budgetary crisis has caused a reevaluation of funding priorities (Plascencia, 2010). Coupled with public health concerns, the number of youth in detention has reached a historic low point. Judge Mendelson noted that in July 2020 that there were zero juvenile delinquents<sup>2</sup> in New York City secure detention facilities.

### *Clayton County, Georgia*

In response to the coronavirus pandemic, the Clayton County Juvenile Court instated drastic changes starting in March. In pre-pandemic times, there were on average 15 youth in detention in Clayton County. Because of the pandemic, Judge Teske adopted a new practice of only considering serious violent felonies for admission to detention and released detained youth according to this standard. According to Judge Teske, Clayton County's new average youth in detention population is two (2020a). As of late September 2020, less than 1% of the released youth had reoffended. Additionally, the Clayton County Juvenile Court transitioned to remote operations and began conducting non-trial proceedings remotely via FaceTime and Zoom. After arrest, the court releases eligible youth to their caregivers and conducts a virtual intake assessment interviews to assess needs with a new multidisciplinary support panel called Finding Alternatives for Safety and Treatment (FAST).<sup>3</sup> FAST meets virtually with youth and families to connect them to supports like food, housing, and mental health services (Teske, 2020a).

## A Continuing Dialogue

While speaking during the *Are the Kids Alright? COVID-19 and Youth Forum* in June 2020, Judge Mendelson's discussion focused on the concerns about detention decisions, family contact, interrupted education, isolation and mental health concerns, and unemployment. Many of these issues persisted through September, with the greatest impact on youth of color. Central to Judge Mendelson's concerns from June to September

<sup>2</sup> "Juvenile delinquents" is a technical term used here, contrasted with other the technical youth designations which include juvenile offenders and persons in need of supervision (PINS).

<sup>3</sup> Future research would be required in order to empirically validate this assessment strategy.

have been the necessity to support the children and families with flexibility and as light a touch as possible from the justice system, recognizing the potential adverse and inequitable impacts of system contact. In the same forum, Judge Teske spoke with great optimism about his plans to sustain low detention rates using his revised detention criteria past the end of the pandemic. His position on the subject in September had not changed given Clayton County's continued low recidivism rates. In June, Judge Teske also spoke about institutionalizing remote hearings for youth and families who have transportation or other accessibility limitations. In September, he reiterated his intention to continue remote operations according to each youth and family's unique needs. Judge Teske's commitment to permanently altering some court processes suggests that sustaining the pandemic's positive youth-justice related changes is possible. These changes may indicate a shift in the trajectory, rather than a "blip" in the larger picture of juvenile justice.

## RECOMMENDATIONS

The pandemic-precipitated changes occurred out of necessity and much faster than usual reform efforts. While these changes have been made possible in part due to the novel social and public health climate in 2020, many of the current reforms have been discussed for decades. It is important to assess and evaluate which of these changes should be carried forward and expanded into the future. We are in a critical moment of reflection motivated by an "undeniable vibrant skepticism of many and questioning [by] many of the fairness of all of our touch points in the justice system as it regards race," (Mendelson, 2020). The collection, analysis, and dissemination of youth justice data will be key in gauging the efficacy of new policies. It is critical to disaggregate these data by race and ethnicity to assess disparities.

Each section in the remainder of this paper covers a theme that one or both of the judges identified as a priority area in the pandemic context and beyond, with further explication and support from academic literatures resulting in concrete recommendations for judicial actors. Not all of the recommendations in this following section will be applicable to all jurisdictions or judiciary roles. However, we hope that these recommendations can be adapted to many contexts.

We have organized the recommendations into three categories, which are not intended to be mutually exclusive or all-encompassing:

1. Defining and Promoting Justice;
2. Making the Most of Pandemic-Specific Opportunities for Improvement; and
3. Advocating for Reform Beyond the Courtroom



## Defining and Promoting Justice

When asked to define justice, Judge Mendelson and Judge Teske recognized the critical differences between due process and procedural justice. Within the criminological literature, procedural justice is a concept often tied to citizen perception of system legitimacy and compliance (Nagin & Telep, 2017). In Judge Teske's (2020a) words, procedural fairness is "due process on steroids." Both judges used words and phrases such as dignity, kindness, respect, professionalism, listening, being mindful of the impact of one's own actions and positionality, and improving accessibility. According to Judge Teske, procedural justice goes beyond due process, which is the bare minimum that is statutorily required. Similarly, Judge Mendelson considers due process to be the fair application of rules and statutes in relation to a court's basic operations. Below, we outline some concrete suggestions for how judges can promote procedural justice, fairness, and dignity in their courtrooms in order to set higher standards than what due process alone requires. Quotes are lightly edited for clarity.

### *Recommendations*

*Use courtroom policies to foster procedural justice.* The courtroom policies that judges set play a critical role in ensuring procedural fairness. As Judge Teske has done in his courtroom, judges can evaluate the current rules and procedures, looking for points that may hinder youth's ability to exercise their full constitutional and human rights - and then work to change these rules and procedures if possible. As noted in the quote below, one major reform that Judge Teske implemented in his court was a ban on plea bargaining:

I got rid of plea bargaining in my court years ago. . . how do you teach a kid that they have a Sixth Amendment right to a trial, but then on the other hand tell them 'and by the way, if you force us to go to trial, I'm going to ask the judge for the maximum?'

Additionally, training all courtroom staff, including attorneys, in accordance with the ideals of procedural justice is key. As Judge Mendelson emphasized, "[procedural justice is] in the hands of every single human being that a court user encounters; from the time they enter the [virtual or physical] courtrooms, everyone has a role in contributing to procedural justice." Ensuring all staff members are aware of youth and families' perceptions of the court process can foster accountability. Judges can verbally ask check-in questions or implement written or verbal exit surveys in their courtrooms, practices that Judge Teske engages in, to ensure that youth and families feel that they were treated with respect at all levels and stages of the legal process.

*Consider the impact of systemic issues.* In Judge Teske's words, evidence-based programs may not be successful due to systemic factors, like poverty:

We can introduce all the evidence-based programs and restorative practices we want, but the fact of the matter is that none of that is really going to attach as well if we don't also consider the circumstances that our families are living in and find ways to provide them the resources. . . it's kind of hard to hear somebody talking and teaching you a skillset that would be useful if you're thinking more about whether you're going to have dinner.

This point is salient as the pandemic has triggered widespread job loss and financial insecurity, with 43% of Black adults and 37% of Hispanic adults reporting that they had trouble paying their bills between the start of the pandemic and mid-August, compared to 18% of white adults (Parker, Minkin & Bennett, September 2020). There is an acute need for judges to consider the entire context for the youth who appear before them to best serve them.

*Focus on relationship building.* Although establishing positive relationships with youth and families is a central component of procedural justice, it is of even greater urgency now. Youth of color in particular are currently dealing with multiple layers of intense trauma. As judges implement procedural justice-focused policies, it is critical that they consider the varying ways that the policies impact different populations and identities. By always keeping this in mind, judges can foster more positive courtroom interactions and better adapt to the unique needs of each youth and family. Furthermore, the world is experiencing a collective trauma, and Judge Mendelson noted that judges can draw on this experience to increase their empathy and sensitivity:

There's a heightened sensitivity among the juvenile and family court judges to the trauma. . . that folks are experiencing in life to begin with. But [the judges] have also been traumatized by COVID-19 and the racial justice issues we're grappling with. And I think that has sensitized them to the trauma experienced by court users, which I think is going to make a better judge.

There are many strategies that judges can use to build positive relationships and adapt to young people's unique situations. Judge Teske has found that telling the person he is speaking to that they matter to him, taking youth and families seriously as trustworthy messengers of their own situations and hardships, and making sure that youth's primary caregivers are consistently included and informed are all good strategies.

Judges can also build relationships beyond the walls of the courtroom with community organizations and service providers. As Judge Mendelson noted, this is a necessary element for any significant reform efforts, even when difficulties arise.

We try to disagree without being disagreeable. . . Because after that we. . . come back again to meet, talk, listen, and learn more. I think that this is how we have had all of the significant reform efforts that I've witnessed or been a part of.

Being familiar with community support systems can help judges make informed decisions when referring youth to outside resources. Further, if judges have built a positive relationship with a youth and their family and can then vouch for a community-based resource, the family may feel more comfortable moving forward with that resource. In order to sustain the current diminished reliance on detention in favor of community-based resources, it is crucial that judges familiarize themselves with all options available.

*Consider the role of physical and virtual spaces.* The design, layout, and other physical aspects of a courtroom may impact the dynamics inside. For example, "each time a floor is raised it has the potential to become the physical manifestation of hierarchy and

power” (Mulcahy, 2007, p. 385). Judge Teske is keenly aware of how these dynamics interact with race:

When Black people walk into my courtroom and they see a white judge, you know, it scares the hell out of them. So, it’s incumbent upon the judge...to not only acknowledge that, but to overcome it. And I can’t overcome it unless I get real with people and show them that I really care. So, I’m gonna have to come up with other [virtual] strategies.

In an effort to help youth and families feel more comfortable, Judge Teske worked with architects to use physical space as a tool for fostering positive relationships, attempting to make his courthouse’s entryway more welcoming. Though most judges do not have the chance to design their own courthouses or courtrooms, they can influence the spatial relationships between people in their courtrooms in other ways. For example, Judge Teske often leaves the bench and sits next to young people so that they are on the same level and can make eye contact while speaking.

Remote court operations complicate the role of space. Judges may find it more difficult to build relationships if they are operating exclusively through a computer screen or over the phone. Building these connections will require a different skillset compared to being in person. However, hierarchies that appear in-person may be less visible in video and phone calls, which may help to neutralize negative power dynamics (Mulcahy, 2007, p. 100-102). Phone and video calls eliminate this spatial distinction between judges, attorneys, and clients. More research on the impact of remote operations on the power dynamics of courtroom proceedings would provide critical insights into which aspects of remote operations should continue post-pandemic.

*Ensure appropriate use of technology.* Technology has enabled the continuation of court functions throughout the pandemic. The ability to make a court appearance from one’s own house, in a shorter window of time, reduces the burdens of transportation and time that people expend to conform to courts’ procedural rules. Another by-product of virtual appearances noted by Judge Teske is that parents tend to be more present. Institutionalizing more avenues for flexibility may continue the unexpected positive results of using technology.

On the negative side of the ledger, technology can complicate people’s ability to communicate effectively. It is important for judges and other court workers to be cognizant that using virtual technology grants unprecedented access into an individual’s personal life during their court appearance. Judge Mendelson noted that “access to the technology that is critical to full participation is not evenly available.” She suggested working with other community organizations and resources to provide tech support to those less comfortable with using technology and when able, providing the option for in-person court proceedings. She further noted that it is important to keep public-facing resources (e.g., voicemail messages and websites) up-to-date and compliant with accessibility standards.

Online operations also raise privacy concerns. The transformation of one’s criminal record into vendible datapoints and the creation of a digital footprint

documenting one's history to the public can cause lifelong stigmatization and stand in the way of rehabilitation, reintegration into the community, and the opportunity to live a fulfilling life after having contact with the criminal justice system (Lage-son, 2020). Some videoconferencing platforms feature stronger security and confidentiality features than others, which courts should consider when planning for continued remote operations (Kagan, Alpert & Fire, 2020). Many organizations have released toolkits and best practice guides for remote courtroom operations, which can help courts make informed decisions to suite their specific needs. There is evidence that suggests that videoconferencing introduces a virtual appearance bias in immigration and criminal court systems. One study found that remote adjudication in immigration courts is associated with higher rates of deportation (Eagly, 2015), and another found that defendants in videoconferencing hearings are more likely to have higher bond amounts than defendants appearing in-person for the same offense (Diamond, Bowman, Wong, & Patton, 2010). More research is needed to determine the impact of virtual appearances on youth outcomes.

### **Making the Most of Pandemic-Specific Opportunities for Improvement**

As much as the pandemic has strained justice systems, it has also catalyzed new ways of conceptualizing and carrying out justice (Barnert, 2020). For Judge Teske, the pandemic has reiterated the importance of thinking “outside of the room that the box is in.” In particular, the recent decrease in juvenile detention rates with no established negative impact on public safety serves as a model for future decarceration-oriented reform efforts. As mentioned above, the use of technology for daily courtroom operations has shed light upon the complicated balance of accessibility of justice and privacy and racial equity concerns.

#### *Recommendations*

*Exercise judicial discretion where appropriate.* Federal judicial sentencing guidelines, established in 1984, have a complicated relationship with judicial discretion and disparities. Since the 1990s, legislation and court decisions have ruled that these guidelines are flexible suggestions that must be considered prior to sentencing, rather than requirements. Recently, using the arguments presented in *Roper*, *Miller*, *Graham*, and *Montgomery*, there has been a push toward considering a person's youthful status as a mitigating factor in federal sentencing decisions, whereas earlier guidance explicitly excluded it (Harvard Law Review, 2017). Judge Teske discussed how sentencing guidelines can stand in the way of procedural justice if a judge treats them too much like “guardrails,” and he recommends considering mitigating circumstances wherever possible. He said, “justice is being nice, kind, and respectful, and also doing what is fair, even when you have sentencing guidelines.” The pandemic has demonstrated that an overreliance on detention risk tools can have the undesirable effect of detaining youth who do not pose a threat to community safety. He reflected on Clayton County's processes:

Even though [Clayton County is] a leader in detention reform in the country, we still could have done it better. And so, we've now reshaped our juvenile justice system. So, we're also learning. . . maybe the [detention risk tool] is not the best.

Similarly, New York State is continuously conducting status reviews to keep as many young people as possible in the community. Judge Mendelson noted these conversations must include all out-of-home placements: congregate care facilities, out-of-home placements with relatives, and other non-secure spaces, in addition to secure detention.

*Strategically push for policy change.* The rapid, system-wide changes resulting from the pandemic have offered a “trial run” showing that drastically reducing the system’s touch on young people and responding to their needs on a case-by-case basis is possible. In ordinary times, reformers would have had to spend much more time convincing and collaborating with others in order to achieve a fraction of these changes. Since the pandemic has continued longer than anticipated, data reflecting the impact of these changes have accumulated. Judge Mendelson noted that “we have the lightest touch of our system on young people in my lifetime.” However, Black youth are still disproportionately in contact with the justice system, and these disparities persist and worsen deeper within the system (Rovner, 2020).

Data are meant for neutral assessment purposes in the ongoing effort to improve the lives of youth and families, not to shame system actors for their past practices that they previously believed to be effective. Judges can make the most of these data to identify which practices had positive outcomes and to advocate for the institutionalization of these reforms using the now existent proof of their success. Judge Teske recommends having a non-biased party in attendance at convenings, such as a university researcher, to present and explain the data. He finds this is an effective strategy to remove the political and personal lenses that often impact policymaking:

“Many of these judges are elected and it’s really great if they can bring in somebody from the outside, who is saying ‘this is what y’all ought to do’. . . It lends some credibility for them.”

Judge Teske explained that he uses data to demonstrate a “smart on crime” approach that is good for public safety. Using this positive framing allows for a more politically palatable and data-driven policy approach.

### Advocating for Reform Beyond the Courtroom

Judges can draw upon their unique position as courtroom actors endowed with the ability to hold convenings to speak publicly about justice-system related issues and to contribute to educational efforts in order to advocate for systemic change and reform. Judges are also intended to be politically neutral and nonpartisan, which allows them to bring together various groups, from state agencies to advocates, families, and beyond. Before engaging in these direct actions, Judge Mendelson recommended that judges familiarize themselves with local ethical rules and procedures, as these differ by

jurisdiction. While the pandemic has not changed the rules and procedures surrounding judges' engagement in reform efforts, it has illuminated new possibilities and creative ways that judges can participate.

### *Recommendations*

*Collaborate.* Judge Mendelson and Judge Teske both emphasized that collaboration is the most important component of the reform process. Judge Mendelson declared that she never had "one bright idea for reform." Rather, ideas emerge through communication with her staff, other judges, and advocates and community members with diverse perspectives. Judge Mendelson described how judges can facilitate this collaboration by hosting or attending public events like stakeholder meetings or town halls, saying, "it's often said that when a judge calls a meeting, the entities will appear."

Judges can also participate in and lead meetings as members of various local and national bodies. Both Judge Mendelson and Judge Teske are members of several organizations, councils, and commissions. In her presentations, Judge Mendelson publicly and frequently recognizes her team's contributions to the content, reflecting the importance of highlighting others' efforts and voices. Being open to and actively working toward collaboration means that judges will be exposed to ideas they may wish to adopt to effect change in their courtrooms.

Collaboration efforts require consistency to be successful. Judge Teske recommends creating a collaborative forum for the issue, giving the forum an official name, documenting the forum's purpose and goals in writing, clearly designating leadership, and establishing subcommittees with accountability measures. This is the process that Judge Teske undertook in his successful school-justice partnership to reduce school-based referrals. Here, judges can draw on their convening power to help ensure that events are as accessible to the community as possible, including online events. Given the now-commonplace remote nature of gatherings, judges have the option of inviting participants from a wider geographic range to include new perspectives. For example, the Black Lives Matter movement has called attention to the critical role of grassroots activists and advocates in promoting equity and justice; these voices can offer invaluable contributions to the reform process. Judges and their professional organizations can amplify these conversations. Judge Mendelson also recommended asking those "in the room" for their assistance in identifying who else should be a part of the conversation.

This collaborative model will be particularly useful for institutionalizing positive pandemic-related changes and holding the system accountable to sustaining change. By bringing together various court actors, service providers, community organizations, and community members, judges can help foster the creation of sustainable solutions that capture the lessons learned since the pandemic began.

*Educate.* Judge Mendelson noted that the volume of trainings, conferences, forums, and other information sources that judges can access has increased due to the virtual shift. These are often free and available globally. Judges may wish to make the most of these readily available resources in order to teach and to learn. While there are some

ethical limitations surrounding activities outside the courtroom that are placed on judges, Judge Mendelson reflected:

I'm grateful that judges get to be engaged and work in the courtroom. Quite frankly I left the family court leadership job because I desired that courtroom touch and impact, and the energy I get from serving as a judge but judges, all judges, have an outside of the courtroom ability to educate.

These educational avenues include speaking at community forums, talking to students, and helping to design and implement trainings through collaborations with various agencies. The pandemic and racial justice movement have sparked a renewed interest in this sort of education.

## CONCLUSION

The coronavirus pandemic has been a tragedy of devastating magnitude, with the greatest burden in the United States falling on low-income communities of color. Judge Mendelson reminds us that, as of this writing, we are still in crisis mode. She emphasized that “[not] all moments are thriving moments. . . I’m not sure thriving is possible right now because we’re still in crisis.” We can simultaneously recognize the suffering that has defined this year and work to carefully transform our systems so that laws and policies fully reflect equity and justice. As our conversations with Judge Mendelson and Judge Teske have illustrated, juvenile and family court judges have unique powers which they can use to seize this moment of rapid change. As individuals, judges can improve the lives of the youth and families directly in their courtrooms and wider professional networks. Systemic issues, however, require structural changes. Judges can be critical partners in gathering the collaborators who will be responsible for these changes. These changes must be informed and driven by community engagement and data.

Judge Teske left us with a reminder about the gravity of judicial decision-making on young people’s health and well-being, “sometimes we just don’t know how much we really are influencing people out there. And so we shouldn’t take it for granted.” The decision to confine someone translates to their increased vulnerability to adverse experiences (Barnert, 2020; Barnert, et al., 2017; Beck, Harrison, & Guerino, 2010). While trauma may be at a heightened level right now because of COVID-19 and televised racial violence and police brutality, unequal access to healthcare and racial injustices will not disappear when a vaccine becomes widely available or when Black Lives Matter protests cease to be the subject of news media. We must institutionalize the practice of questioning and reevaluating our systems for the benefit of all.

## ETHICS NOTE AND DISCLAIMER

For this project, the researcher participants provided consent to identify them by name in products arising from their interviews. The research team is grateful for the time

generously provided by Judge Mendelson and Judge Teske. The findings, analysis and discussion presented in this article are attributed solely to the authors and do not reflect the official policy or position of the authors' affiliations.

## ACKNOWLEDGEMENTS

The authors would like to thank Judge Mendelson and Judge Teske for their time and participation in this study. We would also like to thank Dr. Giza Lopes, for her mentorship and feedback throughout this project, and Avery Irons and Brian Rainey, for their comments on earlier drafts. Further, we want to extend our thanks to Sasha Boroda for her formatting support. We are grateful for the reviewer and editor comments we have received. This paper has been made better by the contributions of many.

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